

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MICHAEL A. JOHNSON,

Plaintiff,

v.

1:15-cv-2482-WSD

THEODORE JACKSON,

Defendant.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Justin S. Anand's Order and Final Report and Recommendation ("R&R") [8], recommending dismissal of this action under 28 U.S.C. § 1915(g). The Magistrate Judge's R&R also ordered his previous Report and Recommendation [3] withdrawn.

I. BACKGROUND

On July 10, 2015, the Clerk of Court docketed Plaintiff Michael A. Johnson's ("Plaintiff") motion for emergency intervention [1] as his complaint in this action.¹ On July 22, 2015, the Magistrate Judge determined that Plaintiff's allegations did not warrant an emergency response, and ordered [2] him, within

¹ The motion captions Plaintiff as "Michael A. Johnson, individually and collectively, et al.," and Defendant as "Theodore Jackson, Sheriff of Fulton County, GA, et al., Individually and Collectively." Plaintiff does not identify any additional Plaintiffs or Defendants.

twenty one (21) days, to pay the \$400 filing and administrative fees for this action or submit an affidavit seeking leave to proceed *in forma pauperis* (“IFP”), and also to file an amended complaint. The Magistrate Judge advised Plaintiff that failure to comply with the order may result in dismissal.

On August 27, 2015, the Magistrate recommended [3] dismissal of this action because Plaintiff failed to obey the Court’s order. On August 28, 2015, the Court received Plaintiff’s amended complaint, signed on August 18, 2015, in which Plaintiff alleged he faced a “life-threatening environment” at Fulton County Jail. ([5] at 4, 5). The Court also received Plaintiff’s notice of change of address [6], indicating he had been transferred to state prison. Plaintiff has not filed an IFP application, as ordered.

On September 16, 2015, the Magistrate Judge issued his R&R, ordering withdrawn the previously-submitted report and recommendation. In the R&R, the Magistrate noted that Plaintiff’s notice of change of address confirms his identity as the Michael Johnson who has three strikes under 28 U.S.C. § 1915(g). Section 1915(g) prohibits him from filing a civil complaint in the Court without first paying the filing fees in full, unless he is under imminent danger of serious physical injury. (R&R at 2-3). Plaintiff was required to pay the full filing and administrative fees at the time he submitted his complaint, and he failed to do so.

The Magistrate concluded Plaintiff did not present a colorable claim that he was in imminent danger of serious physical injury at Fulton County Jail, and he therefore recommended the case be dismissed without prejudice. (Id. at 3).

II. DISCUSSION

A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). Where, as here, no party has objected to the report and recommendation, a court conducts only a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983) (per curiam).

B. Analysis

Because Plaintiff has three strikes under Section 1915(g), Plaintiff was required to pay the full filing and administrative fees at the time he submitted his complaint. See Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002) ("[A]fter three meritless suits, a prisoner must pay the full filing fee at the time he *initiates*

suit.”). Plaintiff failed to do so, and has also failed to show that he was in imminent danger of serious physical injury at the Fulton County Jail, where he is no longer detained. The Court finds no plain error in the Magistrate Judge’s findings and recommendation, and this action is required to be dismissed under 28 U.S.C. § 1915(g).

III. CONCLUSION

For the foregoing reasons,


IT IS HEREBY ORDERED that Magistrate Judge Justin S. Anand’s Final Report and Recommendation [8] is **ADOPTED**.

IT IS FURTHER ORDERED that Plaintiff’s Emergency Motion for Intervention [1] is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff’s Amended Complaint [5] is **DISMISSED**.

IT IS FURTHER ORDERED that this action is **DISMISSED WITHOUT PREJUDICE** under 28 U.S.C. § 1915(g).

SO ORDERED this 8th day of October, 2015.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE